

FMP OPERATING CO.

IBLA 87-506

Decided November 8, 1989

Appeal from a decision of the Minerals Management Service requiring the payment of interest charges for the late payment of royalties. MMS-86-0197-OCS.

Affirmed.

1. Oil and Gas Leases: Royalties: Interest

MMS properly assesses interest for a late payment of royalty on a Federal offshore lease where the late payment is due to the fact that the lessee mistakenly pays the royalties due on that lease into another lease account.

APPEARANCES: George J. Domas, Esq., New Orleans, Louisiana, for FMP Operating Company; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

FMP Operating Company (FMP) has appealed from a decision dated March 13, 1987, by the Assistant Director for Program Review, Minerals Management Service (MMS), affirming an assessment of interest charges for the late payment of royalties on lease OCS-G-2728 for the sales month of December 1984.

Due to a clerical error on its January 1985 Form MMS 2014, FMP under-reported the volume of gas and royalties due on lease OCS-G-2728 and overreported the volume and royalties due on lease OCS-G-2729. On its August 1985 Form MMS 2014, FMP corrected the error, paid an additional \$66,256.38 due in royalties on the December 1984 production from lease OCS-G-2728, and requested a refund of the same amount for royalty overpayment on lease OCS-G-2729.

By invoice No. 01600419 dated April 2, 1986, MMS billed FMP \$5,785.04 in late payment charges for several leases. Of this total, \$5,017.72, the amount assessed on FMP's late payment of royalties due on lease OCS-G-2728, is involved in this appeal.

In its decision ruling that late payment interest charges were properly assessed, MMS explained its policy:

[W]hen a royalty payment which is otherwise timely and sufficient is miscoded on Form MMS-2014, such misidentification will result in a reporting error assessment pursuant to 30 CFR § 218.40 rather than the assessment of late payment charges, provided that the lessee has correctly identified the lease for which payment was made. In this case the Appellant did not correctly identify the lease for which payment was intended. * * * It is clear from the record that the royalties for Lease No. OCS-G-2728 were underpaid. * * * The Appellant has a responsibility to ensure that its royalty payments are reported correctly. [Emphasis in original.]

(Decision at 2-3).

The decision also stated that MMS does not offset royalty payments among leases or sales months because each lease contains its own obligation for the lessee to make royalty payments and because it would be inefficient for it to do so.

FMP contends on appeal that

throughout the period from January through August, 1985, the MMS had in its possession the full amount of \$136,521.70 attributable to the royalties from Leases OCS-G 2728 and 2729. There was no late payment of royalties; there was merely a clerical error in attributing certain production and royalties from Lease OCS-G 2728 to Lease OCS-G 2729.

(Statement of Reasons at 3). FMP argues that section 111(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1721(a) (1982), does not authorize imposition of interest in this case because

"the payments of royalty were received on the date that the payments were due" ^{1/} (Statement of Reasons at 5). The legislative history of section 111(a) makes it clear that interest charges for late payments of royalty were designed "to remove the incentive [those owing money] may have to hold the money owed and invest it rather than pay it on time to the MMS," FMP observes, quoting H.R. Rep. No. 859, 97th Cong., 2d Sess. at 4, reprinted in 1982 U.S. Code Cong. and Ad. News 4268, 4290.

^{1/} Section 111(a) provides:

"In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments at the rate applicable under section 6621 of Title 26. In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount due."

Obviously, FMP did not hold the money owed and invest it rather than pay it on time to the MMS; rather, FMP paid the correct amount but merely made a clerical error in attributing the money owed to a different lease. Thus, the Royalty Management Program's insistence on requiring late payment charges in this case violates the intent of Congress in enacting Section 111 of FOGPMA

FMP argues (Statement of Reasons at 6). Finally, FMP argues that MMS misapplies 30 CFR 218.40(b), which authorizes an assessment of up to \$10 for each report (defined as "each line item on a Form MMS-2014," see 30 CFR 218.40(c)) that is received on time but is incorrectly completed, when it limits the regulation to a miscoded royalty payment on a form on which the lessee correctly identified the lease for which the payment is made. The plain wording of the regulation includes FMP's clerical error, FMP argues.

In response, MMS states that it assesses late payment charges when a royalty payment is credited to the wrong lease because each lease (as well as 30 CFR 218.50) provides that royalties on production are due and payable monthly on the last day of the month next following the month in which the production is obtained and because section 111(a) of FOGPMA requiring the Secretary to charge interest on late payments "applies to late payments at the lease level" (Answer at 2-3). MMS rejects FMP's argument based on the legislative history, stating "Congress did not intend to excuse a lessee from timely payment of royalties simply because the lessee made payment to an incorrect lease account" (Answer at 3). As for 30 CFR 218.40(b), MMS states:

FMP is correct that MMS could assess it for erroneous reporting too. However, when an incorrect lease number on Form MMS-2014 causes the royalty payment to go to an incorrect lease account, it is MMS's policy to assess only late payment charges, rather than also assessing * * * the \$10 per line erroneous reporting assessment.

(Answer at 4).

[1] If we were to accept FMP's argument that its combined royalty payments for the two leases in January 1985 satisfied its royalty obligation for Lease No. OCS-G 2728, we would in effect be allowing its overpayment for Lease No. OCS-G 2729 to offset its underpayment for Lease No. OCS-G 2728. We have consistently held, however, that offsetting may only take place within a single lease account. Mesa Petroleum Co., 111 IBLA 201, 205 (1989); Chevron U.S.A. Inc., 111 IBLA 92, 94 (1989); Union Oil Company of California, 110 IBLA 62, 64 (1989); Mesa Petroleum Co., 108 IBLA 149, 150 (1989); Sun Exploration & Production Co., 106 IBLA 300, 302-03 (1989). ^{2/} Because the royalty for the December 1984 production from Lease No. OCS-G 2728 remained unpaid for several months, MMS

^{2/} The two leases, OCS-G-2728 and OCS-G-2729, are not within the same unit. MMS asserts that it "does not assess interest when royalty payments properly

assessed interest for the late payment of that royalty. 30 U.S.C. § 1271(a) (1982); 30 CFR 218.54(a). 3/

Nor can we accept FMP's argument that its mistake is only covered by 30 CFR 218.40(b). When that regulation was promulgated, MMS explained: "A charge of \$10.00 may also be assessed for reports that are received by the due date but are incorrect. For purposes of the Auditing and Financial System (AFS), a report is defined as each individual required transaction code for each Accounting Identification Number (AID), Product Code, and Selling Arrangement." 49 FR 37336 (Sept. 21, 1984). The AID Number is made up of a lease number and a revenue source code. See Mesa Petroleum Co., 107 IBLA 184, 190 (1989); Oil and Gas Payor Handbook, Vol. II, Report of Sales and Royalty Maintenance (Form MMS-2014), Release 01, September 1986, at 2-8. Therefore, as MMS suggests, a wrong lease account number could be subject to an assessment of not to exceed \$10. Because the regulation provides that such an assessment "may be charged," it is within MMS' discretion whether to do so or not. But whether or not an assessment for an incorrect report is made, a lessee is liable for interest on its late royalty payments.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge

fn. 2 (continued)

are reallocated among leases within a unit in circumstances like those in the instant appeal" (Answer at 2 n.2). Cf. Phillips Petroleum Co., 108 IBLA 340 (1989).

3/ In a case involving somewhat similar circumstances, Yates Petroleum Corp., 104 IBLA 173 (1988), we held that a lessee could not escape interest charges for late royalty payments even though the lessee had, at all times, on deposit with MMS, sufficient funds to have covered the royalties due.